NORTH AMERICAN REVIEW.

No. CCLVIII.

SEPTEMBER-OCTOBER, 1877.

ART. I. — THE "ELECTORAL CONSPIRACY" BUBBLE EXPLODED.

> "The earth hath bubbles, as the water has,
> And these are of them : whither are they vanish'd ?
>
> Into the air ; and what seem'd corporal, melted
> As breath into the wind."

POLITICAL literature, contributed by violent and disappointed partisans, seldom deserves or takes a high rank in the esteem of men, either for style or permanent usefulness. That contained in the last number of this Review, entitled "The Electoral Conspiracy," furnishes no exception to this rule. Its author, the Hon. J. S. Black, was one of the counsel for the defeated Democratic candidates for President and Vice-President before the Electoral Commission. Having been long a member of that party, and especially distinguished, when Attorney-General of the United States, for his devotion to the fortunes and the schemes of the Secession leaders of the South, he saw in the defeat of their favorite nominees, Messrs. Tilden and Hendricks, only another triumph of Northern principles and of Northern Union men, both regarded by him with sincere dislike.

In view of this, was he wise "to remind the reader of certain points in our political history which have within the last twenty years divided the two parties and defined their antagonism" ? Or fortunate in unfolding the bloody leaves of that treasonable record which contains the history of those with whom he and other lead-

ers of his party sympathized during the Rebellion? His position as counsel before the Electoral Commission, his Republican hatreds and prior rebellious proclivities, should have inclined him not to question the motives of a majority of that tribunal, although professional propriety might not have absolutely prohibited fair and moderate criticism upon its legal opinions. Such criticism he has not been content to make, but whilst declaring that "a question is raised which demands fair, full, and free discussion, so that truth may prevail and justice be done," he has charged eight of its fifteen members with conspiring to violate their oaths and duty for the purpose of upholding the fraudulent action of Returning Boards, and with accomplishing this by a wilful disregard of law and evidence, that the people of this nation might be defrauded of the President of their choice. Stated in the hideous language he employs, "All that once ennobled the nation seemed to be buried in this deep grave dug by the Returning Board and filled by the Electoral Commission." This general mode of libelling a majority of its members did not, however, satisfy the taste or temper of that gentleman. He yearned for more specific methods of presenting his estimate of their motives and conduct, and these he found and employed by means of language distinguished for both strength and coarseness, and, it may be added, not losing in vigor or brutality for lack of perversion or misrepresentation.

Thus he says: —

"The Eight Commissioners did not stop there. . . . . They practically sustained and justified all the infinite rascality of the Returning Boards. They not only refused to take voluntary notice of the atrocious frauds perpetrated by them, but they excluded the proofs of their corruption which the Democratic counsel held in their hands, and offered to exhibit. These Commissioners choked off the evidence and smothered it as remorselessly as Wells and his associates suppressed Democratic returns. And this they put on the express ground that to them it was all one whether the action of these Boards was fraudulent or not. They would suffer no proof of corruption to invalidate the right claimed by a Hayes man to put in the vote of a State for his candidate.

"This monstrous and unendurable outrage was resisted to the utmost. All of the *Seven* implored and protested against it. . . . . But the Eight were as deaf as adders to the voice of reason and justice. They would not permit the fraud to be assaulted, much less to be destroyed.

They stood over it to protect it and save it, — interposing the broad ægis of their authority to cover it against every attack."

And again: —

"In all the discussions of the subject the men disposed to favor the conspiracy professed a most profound veneration for the "forms of law." This was the keynote struck at New Orleans by the visiting committee, and it is heard in every subsequent argument of counsel and commissioner on that side. It seemed to be understood among them that a formal cheat was perfectly safe from exposure."

These are but a few of the many bitter and groundless charges with which this article abounds, showing its author's hostility to that majority of the Commission which ventured to decide the great questions before it contrary to his views. After alluding to the circumstances which led to its creation, he says: —

"The Democrats consented to this in the belief that no seven Republicans could be taken from the Court or from Congress who would swear to decide the truth and then uphold a known fraud; if mistaken in that opinion of their adversaries' honesty, they felt sure, at all events, that the umpire would be a fair-minded man. They were bitterly disappointed; the Commission went eight to seven for the Great Fraud and all its branches; for fraud in the detail and in the aggregate; for every item of fraud that was necessary to make the sum total big enough, — eight to seven all the time."

In closing this series of assaults upon members of a Commission earnestly favored by his own party as a means of ascertaining and counting the electoral vote, he says: —

"If the majority of that Commission could but have realized their responsibility to God and man, if they could only have understood that in a free country liberty and law are inseparable, they would have been enrolled among our greatest benefactors, for they would have added strength and grandeur to our institutions. But they could not come up to the height of the great subject. Party passion so benumbed their faculties that a fundamental right seemed nothing to them when it came in conflict with some argument supported by artificial reasoning, and drawn from the supposed analogies of technical procedure. The Constitution was, in their judgment, outweighed by a void statute, and the action of a corrupt Returning Board.

"Let these things be remembered by our children's children, and, if

the friends of free government shall ever again have such a contest, let them take care how they leave the decision of it to a tribunal like that which betrayed the nation by enthroning the Great Fraud of 1876."

Amazement that charges so grave and wicked, against Judges, Senators, and Representatives so able and pure, should have been deliberately written and published by a distinguished member of the American bar, is only equalled by astonishment that they could have been printed and circulated without encountering the indignation, if not disgust, of the respectable representative men and press of the entire Democratic party. Instead of this, however, responsive echoes have been heard along its front and from its thronging masses, until, coupled with prior and somewhat similar charges made by its leaders, we are led to conclude that the political war-cry of that party is hereafter, and until the next Presidential election, to be that signalled by the article in question, "*The Great Fraud of 1876.*"

A late convert to the Democratic party, Mr. Charles Francis Adams, was, it is believed, the first to congratulate Mr. Tilden that he had been defeated by a fraudulent count of the electoral vote. Mr. Tilden, Mr. Hendricks, Senator Beck of Kentucky, and many others of that party, have not hesitated to repeat this charge, for the purpose of discrediting the title of Mr. Hayes to the great office he holds.

The cunning and the baseness which have inspired this plan of attack upon the President of the United States, upon the party he leads, and upon the majority of the tribunal which, in an unprecedented and trying emergency, was created to aid, by its learning and its ability, in counting the electoral vote, will be apparent when the causes which led to its organization are referred to. The whole country remembers the result of the last Presidential election. The Republican party was unanimous in the belief that its candidates were entitled to a majority of one vote in the Electoral College. A Democratic committee of the House of Representatives had reported that Republican electors had been appointed in South Carolina. Canvassing Boards, having for that purpose exclusive power, duly appointed by the Legislatures of Florida and Louisiana, had returned Hayes electors; and the Secretary of State for Oregon, its only canvassing officer, had declared their appointment for that State. For a brief period there was seen in its political firmament, whilst Cronin seemed in the as-

cendant, a gleam of hope for the Democratic party; but it was well known that the vote of that State was Republican by a clear and considerable majority, and but little confidence was felt that an ill-planned conspiracy to pervert the count of its electoral vote by fraud and purchase would succeed. This led Democratic managers, determined to insure the election of Tilden and Hendricks, to resort to other means of attaining their purpose. It was the general opinion of the Republican party that the President of the Senate had the power, and that under the Constitution it was his duty, to count and declare the electoral vote. This opinion was shared by several eminent and able Democrats. A majority of that party, however, believed that such power was vested in the two Houses; and a few believed, or affected to believe, that it resided in the House of Representatives alone. No Republican entertained such a doctrine, but many were willing to concede that electoral votes could only be counted and declared by the concurrent action of both Houses.

Consider now the position of the country in reference to this question. The Senate was Republican by a considerable majority; the House Democratic by a large majority. The President of the Senate was an earnest Republican, entertaining the opinion that he had the power to count and declare the vote, as was done in the case of General Washington and of several succeeding Presidents. A large majority of the Democrats believed that if permitted to perform that duty he would declare Messrs. Hayes and Wheeler elected. They resolved to prevent this. Eminent Republican members of the Senate and of the House of Representatives, who concurred in the opinion that the power to count the electoral vote was vested in the two Houses, were willing to aid in devising some scheme by which a President and Vice-President could be declared elected; for it was not hoped, much less expected, that both Houses would concur in counting or rejecting the vote of either of the contested States, — the rejection of even one being sure to result in the election of Tilden and Hendricks, whilst to count all as returned would as certainly elect their opponents. It was a critical period in the history of the country. The political advantage was, however, in favor of the Republicans. A majority of the electors regularly returned in pursuance of the laws of the several States were Republican. The vast majority of that party

firmly believed it to be the duty of the President of the Senate to count and declare the electoral votes as returned. They therefore naturally opposed any other method as unconstitutional, and as involving a possible, if not probable, surrender of the advantages gained in a canvass of almost unprecedented severity. The two parties were thus at a dead lock. Neither would yield to the other, and many good citizens, many leading statesmen and politicians of both parties, foresaw, as they thought, in the crisis impending great danger to the peace and security of the nation, if provision were not speedily made for counting the contested electoral vote. To attain this some of the ablest intellects on both sides in the Senate and House were employed, and at length the scheme which finally ripened into the Electoral Bill was devised. It encountered the decided opposition of some of the most eminent Republican members of the two Houses. The chosen confidential friends, the appointed henchmen of the Democratic candidates for President and Vice-President, were earnestly engaged in framing and amending the bill until it attained the form in which, by a Democratic vote almost unanimous, it finally passed, — but one Democratic Senator opposing it, whilst in the House it received in its favor one hundred and ninety-one votes to eighty-six against it. It is, indeed, undeniable that the Electoral Commission was in a large degree the creation and offspring of the Democratic party, its leading members uniting for that purpose with patriotic Republicans willing to surrender a political advantage to secure the peace and tranquillity of the country, seriously imperilled, as they believed, by threats of Democratic leaders, who asserted that if the Republican candidates should be declared elected by the President of the Senate, the House of Representatives would proceed to elect and forcibly install Tilden as President.

The terms of the Electoral Bill provided that each House should appoint five of its members, who, with five associate Justices of the Supreme Court of the United States, should constitute a commission to determine which was the true and lawful electoral vote of those States from which more than one paper purporting to be a return of electoral votes had been received, — each member being required solemnly to swear, or affirm, that he would impartially examine and consider all questions submitted to the Commission, and a true judgment give thereon agreeably to the Constitution

and the laws. The members of the Supreme Court of the United States appointed by the act were four, — Justices Clifford, Miller, Field, and Strong, — and they, or a majority of them, were to select another of the associate Justices of the court. They unanimously selected Mr. Justice Bradley. The duty imposed upon these five Justices was delicate, and to them painful. It was not sought by either, and those to whom they are personally known can never doubt that each and all would gladly have avoided its burden and responsibility. They occupied that position by the deliberate choice of the representatives of a vast majority of the Democratic party, and were entitled to the respect and protection of all its honorable members.

And here, we ask, What is the "Electoral Conspiracy" which Mr. Black flaunts at the head of his article? Did it consist in the conception and organization of the Electoral Commission? If it did, who were the conspirators? If he shall venture to say it consisted of something else, will he tell us of what? He intended, we regret to say, to convey to his readers the false impression that the formation of the Commission was the result of a Republican conspiracy to fraudulently elect a President and Vice-President of the United States, carefully concealing the fact that it was not only the result of a compromise, but of one urged upon Republicans as the only means of averting dangers to the country threatened by their political opponents. These and not Republicans were the conspirators, if conspiracy there was. The lamentations, complaints, and denunciations of Judge Black are not, under the circumstances, to be commended. Men, after being worsted in fair encounter, especially if they have had the choice of weapons, rarely whine or call names. We cannot speak for the bulk of the Democratic party, but some of its leaders might be named who would scorn the kind of championship offered by Mr. Black, and spurn with contempt the suggestion that a Republican conspiracy contrived the Electoral Commission, or that its adverse decision authorizes the slander of a majority of its members. Honorable men bow respectfully to the award of the tribunal they have chosen. And here it seems appropriate to comment briefly upon the course adopted by Judge Black towards a majority of the Commission. He was one of the most distinguished Democratic counsel who appeared before it. He was assisted, among others, by

Mr. Carpenter of Wisconsin, and Mr. David Dudley Field of New York, to whom he refers as the great lawyers of the Republican party, who could not endure the Great Fraud, as he calls it, but "assaulted the foul conspiracy with the whole force of their eloquence."

It may, we think, be assumed that the assault of Mr. Carpenter was the product of ample compensation, towards which neither his sense of violated right nor of threatened public wrong made more than a feeble, if any, contribution. The motives which induced Mr. Field to espouse a cause as well suited to his remnant of political principles as any other, were so mysterious and mixed that a respectful silence concerning them should be quite as grateful to him as the mischievous compliment paid by Judge Black. If these two gentlemen were, as he suggests, "the great lawyers of the Republican party," the pain of their professional defeat is doubtless softened by the consciousness that "the whole force of their logic and eloquence" was as abortive to defeat the honest expression of its will at the polls, as the most loyal Republican could have wished; and they may possibly derive additional satisfaction from learning that their joint effort before the Commission was a not inefficient aid in preparing the minds of their auditors for the judicial result which followed.

We have said that Judge Black was a leading and distinguished counsel for the Democratic candidates before the Commission. He failed in his cause. His clients were defeated. The public is not yet prepared to applaud the counsel who, under such circumstances, charges the court with partiality and corruption.

He should remember that he is quite unfit to judge the Judge; for whilst the latter, separated from the interests involved, sits serenely above all prejudice and passion, the counsel, — smarting, as Judge Black evidently did, — under the pain and mortification of defeat, is sometimes not unwilling to relieve himself from the consequences of unwise advice, or profitless professional service, by denouncing the decision and questioning the motives of the court.

When the bar neglects to protect the reputation of courts of justice; when its members forget that the splendor of their order can be maintained, and its independence and usefulness preserved, only so long as the honor and glory of the judiciary are objects

of jealous care; and especially when they shall falsely condemn as impure those who minister to Justice in her temples, then it will come to pass that all reverence for judges, all respect for their decisions, for the law and its administration, will fade away from the public mind, to be succeeded by that sense of insecurity to life, liberty, and property destructive of social order and appalling to mankind.

Judge Black has studiously misrepresented the powers and duties of the Electoral Commission, and the questions it was authorized to decide, and has thus manufactured a pretext for denouncing, as the result of corrupt partisanship, the conclusions of a majority of its members. He insists that they were bound by their duty and their oath to disregard the findings of the Returning Boards of Florida and Louisiana, and that in adopting them a great infamy was accomplished and vile frauds covered up. To cast odium and reproach upon the majority, he asserts that these Boards, and especially that of Louisiana, reached results by wicked and corrupt means, and that in adopting them, with knowledge of this, and of their duty to ascertain the votes for electors by other and independent proof, the Eight were participants in the guilt of those tribunals. A brief examination of the powers and jurisdiction of the Commission will show that, had the course he suggests been adopted, the Constitution of the United States and the independence of States would have been violated; whilst, as will hereafter clearly appear, his assaults upon the Returning Boards and their authors are without foundation.

What, then, was the jurisdiction, what the duty, of the Commission? It is provided in the Constitution of the United States that

"Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors of President and Vice-President, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

And there is also the further provision that

"The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States."

We thus have the powers of the State and of Congress clearly distributed and defined. The State *shall* appoint electors in such

manner as the Legislature thereof may direct, and the Congress *may* determine the time of appointing them, and fix the day on which they shall give their votes, which day *shall* be the same throughout the nation. The object of this last requirement is apparent. If the electors in the different States could cast their votes on different days, an opportunity would be afforded for bribery and corruption. This the framers of the Constitution intended to prevent, and this was made more effectual by another provision, requiring the electors to transmit their votes sealed, directed to the President of the Senate, whose duty it was to retain the same until opened in the presence of the Senate and House of Representatives, when such votes were to be counted.

The power of the State to appoint electors being vested exclusively in the Legislature, and not in the people of the several States, and the only constitutional power of Congress over the subject being to fix the day of their appointment and of giving their votes, it follows that no matter by what mode, or subject to what conditions the State Legislature shall direct their appointment, its determination is absolutely final. Thus, if the Legislature of Massachusetts should — as has been done, we believe, in South Carolina — choose electors by the votes of its own members, or authorize the Justices of its Supreme Court to appoint them, or should direct that a body consisting of three or more canvassing officers should examine votes cast for electors, and certify which were lawful and who were elected, such certificate, or that of the Supreme Court, or of the proper certifying officer of the Legislature in the cases supposed, would be decisive evidence of the appointment of electors in the manner directed by the Legislature; and would be final and conclusive upon Congress, or any other tribunal empowered to count and declare the electoral vote. Nor would the effect of this be changed, if by the law of a State the canvassing officers were authorized, in counting the votes, to reject such as in their judgment had been fraudulently cast, or those cast in a town or district where, by reason of fraud, violence, intimidation, or murder, a fair election had not been held. The power of a legislature to confer such authority cannot be doubted; and the choice of electors, uninfluenced by fraud, violence, intimidation, or murder, seems an appropriate and just method of

securing their appointment. It was, however, offensive to Judge Black, for, although he says "all men will agree that when violence, fraud, intimidation, etc., occur at an election, some action ought to be taken to bring the offenders to justice," he insists the punishment should not extend to disfranchisement, but that the vote should stand. The purpose of the guilty authors would thus be accomplished, leaving their punishment to the very men advanced to office by means so atrocious. Few will concur with him in these views. The morality of the common law denounces them, and has for generations. Again and again courts of justice have pronounced elections so carried to be utterly void.

Such decisions are familiar to bar and bench, and no lawyer of character and learning will dispute their existence or question their authority. If these were wanting, the common sense and common justice of mankind would point to the same conclusion; for what official, what magistrate elevated to office by fraud or violence, would, if fit for the place, consent to occupy it? What man willing to hold office so obtained could usefully administer it? But if it be, as Judge Black suggests, unjust or unwise to exclude violence, murder, intimidation, and fraud as useful factors in the game of politics, a State may nevertheless be excused, if, in the exercise of its supreme and exclusive power to appoint electors, it prohibits the counting of votes cast in polling districts so dominated; and Congress or the Commission had no more power to violate the will of the State thus expressed, than to revise the canvass of votes for its Governor or other officers. Bearing in mind these general propositions, let us consider the powers and duties of the Electoral Commission, as defined by the law creating it. Attention has already been called to the diverse opinions entertained upon the subject of the power to count the electoral vote. In devolving this power upon the Commission, no limitations could be agreed upon. The Act provided that it should proceed to consider the certificates, votes, and papers submitted, "with the same powers, *if any*, now possessed for that purpose by the two Houses acting separately or together, and by a majority of votes decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State; and may therein take into view such petitions, depositions, and other papers,

if any, as shall by the Constitution and now existing law be competent and pertinent in such consideration." No specified jurisdiction was, by the terms of the Act, conferred upon the Commission. It was empowered to count the electoral vote in the cases and subject to the conditions specified, if power so to do was possessed by either or both Houses of Congress; but unless one or both might lawfully exercise it, the Commission could not.

Of what could it take jurisdiction? What could it do? Only this. Where more than one return or paper purporting to be the certificate of electoral votes had been received by the President of the Senate, the Commission was to determine which contained the true and lawful electoral vote of the State from which such returns or certificates had been received. It could exercise no authority in violation of the Constitution, and hence could not interrupt or change the manner of appointing electors by the State. It could only ascertain and declare who had been chosen in the manner prescribed by its Legislature.

Take, by way of illustration, the case of Louisiana. Its Legislature had directed that five persons should be the Returning Officers for all elections in the State, a majority of whom should constitute a quorum, and have that power. They were to meet in New Orleans, receive from the Commissioners of Election the statements by them made of the votes cast at the various polls throughout the State, canvass and compile the same in duplicate, one copy of which they were to file with the Secretary of State, and of the other to make public proclamation by printing in the official journal and other newspapers, in which they were to declare the names of all persons and officers voted for, the number of votes for each person, and the names of persons duly and lawfully elected. The returns of elections thus made and promulgated were declared to be evidence in all courts of justice and before all civil officers *of the right of any person named therein to hold and exercise the office to which by such return he was declared elected.*

The power of the Legislature to pass such a law cannot be doubted. Its validity and the conclusive effect due to the action of the Returning Board thus constituted have been passed upon by the Supreme Court of Louisiana, the highest judicial tribunal of that State, in the following terms: —

"No statute conferring upon the courts the power to try causes of contested elections or title to office authorizes them to revise the action of the Returning Board. If we were to assume that prerogative, we should have to go still further, and revise the returns of supervisors of elections, examine the rights of voters to vote; and, in short, the courts would become in regard to such cases mere officers for counting, compiling, and reporting election returns. *The Legislature has seen proper to lodge the power to decide who has or who has not been elected in the Returning Board.*"

Here a mode is provided of appointing and declaring the appointment of electors, adjudged conclusive and binding. Congress is by the Constitution prohibited from interfering with or questioning the validity of such appointment, the State being vested with exclusive power to do this in such manner as its Legislature may direct. That of Louisiana had expressly confided to the Returning Board authority to canvass the votes and declare who were elected. Had the power of appointment of electors been delegated absolutely to the Board itself, or to the Supreme Court, or to any State officials, without the intervention of voters, its exercise would have been valid as against Congress and the whole world. The Legislature, however, directed that electors should be appointed by a majority of the lawful votes of the State, to be ascertained and declared by the Returning Board. All other means of ascertaining this were, by the supreme will of the State, thereby excluded. The members were bound by the very terms of the statute, if convinced by proof that riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences had materially interfered with the purity and freedom of the election at any poll or voting place, or prevented a sufficient number of qualified voters from voting to materially change the result of the election, not to canvass or compile the statement of votes of such poll or voting place, but to exclude it from their returns. The necessity and justice of this legislation will be shown hereafter. It is enough here to say that it was within the power of the State to pass it.

Hence the palpable error of Judge Black, who says, "It is not denied that the sole power of appointing electors for the States of Louisiana and Florida is in the people," and he adds, "The Seven reminded the Eight, but reminded them in vain, that the due appointment which nobody in the world except the people had the

least right to make, was the very thing which they were there to find out." And near the close of his article he states, "After all, there was but one question before the Commission. Had the American people a right to elect their own Chief Magistrate? They had the right. Their ancestors struggled for it long, fought for it often, and now, it fairly being imbedded in the Constitution, it cannot be destroyed except by a force strong enough to overthrow the organic structure of the government itself." Who should know better than the author of these high-sounding phrases that all are utterly destitute of foundation? They were, however, essential to point his libels against the majority of the Commission; for, unless it was the duty of its members to violate the law of the State, disregard the finding of the Returning Boards, scrutinize the polls and count the vote given for electors, his argument fails and his denunciations degenerate into low and vulgar abuse. Hence his unfounded assertion that the people alone had power to appoint the electors, and his rash declaration that the one question before the Commission was, Had the American people a right to elect their own chief magistrate? No such question was before it. They have no such right imbedded in their Constitution or elsewhere; nor have the people of Louisiana or Florida the power to appoint electors, that being, by the supreme law of the land, vested in each State, to be exercised in such a manner as the Legislature thereof may direct.

Indeed, those who framed and adopted the Constitution of the United States were careful to exclude from the American people the right to elect their Chief Magistrate. After providing for the appointment of electors, that instrument declares that, should they fail to elect a President, the President shall be chosen by the House of Representatives, each State — small or large — having but one vote. By this method a President may, as Senator Morton has in the last number of this Review demonstrated, be elected, not by the American people, but by forty-six members of the House of Representatives, against the wishes and the vote of the other two hundred and forty-seven. It is a waste of time and space to expose misrepresentations like those we encounter in almost every sentence of Judge Black's fiery article. Expunge them, and but a poor skeleton remains.

The question before the Commission was not, had the Ameri-

can people a right to elect their chief magistrate, not what was the vote for electors at the polls either of Florida or Louisiana, — for in both States substantially the same Returning Boards existed, — but who were appointed electors by those States and by the State of Oregon in such manner as their Legislatures had directed. A State acts and speaks through its officers duly constituted; and the canvass and declaration by the Returning Boards of Louisiana and Florida and by the Secretary of State of Oregon were the acts and declarations of those States. They could thus, and only thus, manifest their will to appoint electors; and those declared to be such, by Returning Boards or Officers having exclusive power so to do, were appointed by those States in the manner directed by their Legislatures.

Consider the consequences which must follow a contrary conclusion. Imagine a disregard of the finding and declaration of the Returning Officers of a State, and an attempt by Congress or an Electoral Commission to scan the polls and ascertain who had received the highest number of lawful votes. The Returning Officers, we will suppose, have canvassed the votes cast, and upon proof satisfactory to them have decided that at certain polls and voting places such riots, armed disturbances, fraud, and intimidation occurred as to prevent a fair election, by reason whereof, in pursuance of State laws, they excluded the votes cast thereat for either candidate. The Congress or its Commission, acting independent of State authority, proceeds to revise and reverse the decision of the State tribunals, and decides that other persons than those by them declared elected had been duly appointed electors. Would this be an appointment of electors by the State in such manner as its Legislature directs, or a usurpation of power in violation of the Constitution of the United States? And if Congress may arbitrarily exercise such jurisdiction, may it not at pleasure wrest from the States the right vested in them to appoint electors and thus control the election of President of the United States?

A majority of the Commission declined to exercise a jurisdiction so fatal to State independence, and so hostile to the purpose of the framers of the Constitution, and for this they have been denounced as parties to a conspiracy to cheat the nation of its lawfully elected Chief Magistrate.

Judge Black admits that "it is undoubtedly true that the State has the right to speak on this subject through her own organs, and when she does so speak her voice should be regarded as true," and he then proceeds to declare that the Governor is her proper organ for that purpose, and that as the Hayes electors had the executive certificate of Florida and Louisiana, it would not have been unreasonable to hold it conclusive unless tainted with fraud; and this, he says, gave the Eight a great legal advantage which, he adds, they threw away as worthless because they were "hedging for Oregon." This statement contains a gross perversion of the truth, and of the purpose of a majority of the Commission. The Governor of the State was not the organ of either Louisiana, Florida, or Oregon to declare or certify who were electors. He had no power to canvass the votes cast, or to declare the result, or to state who had been appointed electors. He was as powerless in these respects as the meanest private citizen, and for the reason that the Legislatures of those States had conferred upon a Secretary of State and upon Returning Boards, of which he was not a member, the exclusive jurisdiction before mentioned. Hence, although by act of Congress certified copies of the list of electors are to be furnished to them by direction of the executive of the State, which, with their votes for President and Vice-President, are to be transmitted to the President of the Senate, the list so certified is founded wholly upon the final action of canvassing and returning officers, who, in the language of Judge Black, are the organs of the State speaking her voice, which should be regarded as true. The Commission therefore held that whilst the final determination of Oregon, Louisiana, and Florida thus expressed must be obeyed, it might descend beneath mere executive certificates of what those organs had done and declared, and from their own records read the will and hear the voice of the State. In so doing there was no "hedging for Oregon," but submission to the law and Constitution the Commissioners had sworn to obey. There was dissimilarity between the case of Oregon and the cases of Louisiana and Florida. The only canvassing and returning officer in the State of Oregon was its Secretary of State, who, in the presence of, but not in conjunction with, the Governor, was to canvass and count the votes cast for electors, and to file in his office a statement of the result, — the law of that State declaring that "in all

elections the person having the highest number of votes cast for any office shall be deemed to have been elected."

On the 4th of December, 1876, the Secretary of State, in presence of the Governor, performed that duty; and, as appears from his statement, duly filed as required by law, the Hayes electors received a majority over those for Tilden and Hendricks of nearly one thousand votes. All the votes cast throughout the State were counted, the Secretary having no power to reject any; nor was it ever pretended that the actual lawful vote for electors was otherwise than thus stated. The vote having been thus counted, the law in terms declared that the persons having the highest number of votes should be deemed elected, and these were the Hayes electors. Why, then, "hedge for Oregon"? And yet, by means of a loathsome fraud, contrived in New York, and sought to be effectuated by money there furnished, grave apprehensions were for a time excited that one or more of the electoral votes of Oregon might be counted for Tilden and Hendricks, or suppressed altogether, which would have been equally serviceable to the conspirators. The scheme failed. It was bunglingly contrived, and so infamous that it had but a poor following even in the Democratic party. The statute of that State required that the Secretary of State should prepare two lists of the names of electors elected, and affix the seal of the State to the same, such lists to be signed by the Governor and Secretary, and delivered to the College of Electors at the hour of their meeting on the first Wednesday of December. These lists were of course to be based upon the canvass and statement of votes cast, made by the Secretary of State, and then on file in his office, and the scheme was to induce the Governor, a Democrat of the Tilden and Tweed school, to refuse to sign such a certificate, and thus defeat the expressed will of the State. He was a willing, if not paid, accomplice in this fraud, and, refusing to sign a certificate that the three Hayes electors had been appointed, he caused one to be prepared, which he signed, certifying the appointment of two of them, with a person named Cronin as the third, — one of the defeated Democratic candidates for electors, — for the Governor knew that one additional vote was all that would be needed in Washington, and imagined that a fraud garnished by two Hayes electors would be less offensive than one furnished throughout with those of his own party. A difficulty occurred,

quite unexpected to the poor instruments who were playing a game dictated from the Atlantic coast. The Hayes electors declined to act or vote with the nauseous manufacture thus thrust upon them; and then, to make the matter still worse, Cronin was instructed to choose two other persons as electors, which being done, the Governor of Oregon, having thus furnished his State with electors of President and Vice-President, watched the result. It came in a form which satisfied the honest men of both parties, with the exception of Judge Black. The Commission decided that the Secretary of State, the only canvassing officer of Oregon having made the canvass, recorded and filed it in his office, the result of the election had been declared by the organ of the State in her own voice; that this record could not be tampered with by the Governor, or by any other State officer; and that his attempt so to do was unlawful, utterly void, and to be disregarded by the Commission, which must appeal for guidance to the final voice and will of the State, as uttered from her unsullied archives. Under the circumstances, perhaps Judge Black will feel disposed to withdraw his offensive charge that the Commission was "hedging for Oregon," and apply it to those who sought by a trick to get at least such a fragment of its electoral vote as would insure the election of Mr. Tilden. The decision of the majority of the Commission was throughout harmonious, consistent, and based upon the constitutional requirement — never for a moment overlooked or disregarded — of ascertaining who by each State had been appointed its electors in such manner as the Legislature thereof had directed. This could be attained only by learning to whom such Legislature had confided the power and the duty of making and declaring their appointment. Neither in Louisiana nor in Florida could this be determined but by the action of the Returning Boards, nor in Oregon but by the action of the Secretary of State. The duty of ascertaining, counting, and declaring the electoral vote had been confided to the Commission, but not the power or duty of revising or reversing the action of State tribunals. These were supreme, acting under and bound to obey the laws of the States creating them, to which neither the Commission nor Congress was in any manner subject. If either of those bodies had felt disposed to violate its constitutional duty, by entering upon the inquiry whether the Returning Boards had acted wisely or otherwise in rejecting or

admitting votes at various polls within the respective States, a labor would have been undertaken which, besides occupying many months, would have inflicted a severe blow upon that State independence, especially prized by members of the Democratic party, the mere apprehension of which led one of the ablest and most distinguished — the present Chief Justice of the State of New York — publicly to declare: "I have always expressed the opinion that the authentication of the election of Presidential electors, according to the laws of each State, is final and conclusive, and that there exists no power to go behind them."

With his usual positiveness Judge Black asserts that in Florida the statute creating the Returning Board gave it only ministerial powers, and no authority to reject votes actually cast for any cause whatever; and that the Supreme Court of that State had so decided. He also averred with equal assurance that the Returning Board of Louisiana acted under a void statute, and without the least authority to do what it performed; and this in the face of a decision of the highest court of that State. Party passion and professional zeal, coupled with professional defeat, inspire reckless statements. That of Judge Black that the Florida statute gave only ministerial powers to the Returning Board, by which he means authority only to count and not to reject votes, is answered from the statute itself, which declares: —

"They shall proceed to canvass the returns of said election, and determine and declare who shall have been elected to any office," and "if any such return shall be shown or shall appear to be so irregular, false, or fraudulent that the Board shall be unable to determine the true vote for any such officer or member, they shall so certify, *and shall not include such return in their determination and declaration.*"

In the language of Mr. Justice Bradley, in the singularly clear and able opinion by him delivered in the Florida case, this statute clearly required *quasi* judicial action; and he adds that to controvert the finding of the Board would be, not to correct a mere statement of fact, but to reverse the decision and determination of a tribunal.

The powers of the Board were not, therefore, as stated by Judge Black, ministerial merely, but judicial. Its duty was to canvass the returns, and to determine and finally declare who had been elected

to office; and if any return of votes was so irregular, false, or fraudulent that the Board should be unable to determine the true vote of the polling district, such return was to be rejected and excluded in the final determination. Guided by this law, — the supreme will of the State of Florida, — the result reached and declared was, that the Hayes electors and a Democratic Governor had been duly elected, and in so deciding no existing decision of the Supreme Court of that State was disregarded.

The most patient finally grow weary of exposing absurdities and correcting misrepresentations, but it seems necessary to proceed still further in this distasteful work. It is unfortunate that captivating misstatements clad in blistering words, with which the vocabulary of Judge Black abounds, are not in the esteem of men always disposed of by a mere denial. This will be apparent by an illustration not applicable to that gentleman. Some notorious liar or man of base character attacks an estimable citizen, charging him with having been guilty of grave frauds, inventing such particulars as are calculated to make the charge seem probable. The person thus assailed had as a rule better remain quiet than attempt justification by a simple denial. He must go into detail, submit proofs, and clear his skirts by an appeal to all the circumstances within reach; and then the chances are that his slanderer will have raised such doubts concerning his integrity as to taint him in the estimation of some persons during the remainder of his life; and should he have been prominent enough to make it for the interest of scribblers to write an account of his career, the slander will be quite likely to furnish the most readable portion of it.

So, too, the value of a slander to its author depends much upon the medium of its communication. If, for instance, those written by Judge Black against the Eight had been posted by handbills in the public streets of a large city, they would have been denounced as the utterances of a malicious libeller, published by means too vile for repetition; and if they had appeared in a partisan paper of low or even respectable character, they would never have crept beyond the sheet in which they were first published; but, appearing in the solid columns of a solemn Review of high character, published at comparatively long intervals, mere libels become literature from which the history of nations and of individuals is finally written. The numbers are carefully bound and preserved,

subject only to such lending as good-nature or a disposition to circulate the libels may suggest, until at length they become household words, shrouding the memory of their object with an infamy which posterity cannot remove.

Judge Black complains bitterly because the Commission refused to hold a decision obtained by writ of *quo warranto* before a single judge of Florida, conclusive in favor of the Tilden electors, — he asserting that "by all reason and all authority the Commission was bound to respect this as conclusive evidence." He then says: "They did not do it; they allowed the judgment to have no effect at all. They but looked to see what it was, and immediately swept it out of sight. They put it far from them, and then proceeded to pronounce a different judgment, which suited the Hayes men better."

Now, what was this proceeding, and how and for what purpose was it instituted? The Hayes electors had been declared duly appointed by the only State authority having that power. The day arrived on which, by the law of Congress, they must cast the electoral vote of the State, or it would be lost, and the election of Tilden made certain. They had assembled for the purpose of performing that duty, when they were served with a writ of *quo warranto*, which, in substance, commanded them to show cause, at a future day, before a single judge, by what warrant or title they claimed the right to act as electors. This proceeding was instigated by persons claiming office as Tilden electors, who averred, in substance, that the Hayes electors were in possession of the office, claiming the right to perform its duties. It was a litigation which might be continued by appeal and otherwise for years, and was quite sure to last for many months, — long after the fourth of March. What were the Hayes electors to do? Were they to refrain from casting their votes until the proceeding should end? Were they to delay this even for a day? If they did, they could not cast the electoral vote of the State at all, for, by the Constitution, the day of giving such votes "shall be the same throughout the United States." Was the State to lose its electoral vote because disappointed and mischievous politicians saw fit to obtain from the Judge of their choice a writ, the purpose of which was to defeat the expressed will of the nation, by a litigation which could be terminated or continued at their pleasure?

The Hayes electors cast and certified their vote, as duty demanded, and with that ended all their functions. The litigation proceeded, and, true to the work expected of him, the Judge, a few days before the vote of Florida was counted, decided that the Hayes electors were not duly appointed. Let us suppose the same decision made — as it might have been — after his inauguration as President. What effect would Judge Black, to be consistent with himself, give in such case to the decision of the Florida Judge? The President should, upon his theory, descend from his great office and give place to Mr. Tilden, should he not? And then, supposing this to be done, let us imagine the decision reversed at the end of a year by the Appellate Court of Florida, and what then should be done with Mr. Tilden? Should he, too, in imitation of his predecessor, depart in peace, that the latter might also enjoy the fruits of Florida justice? This game at shuttle-cock would not quite suit the majesty of the great office in question, nor the temper of the American people; and, although many will be amused at the smartness to be found on this subject in Judge Black's article, only those who reflect will entertain for its reasoning the contempt it deserves.

A few lines will forever dispose of the miserable effort made to foist these *quo warranto* proceedings upon the Commission as a reason why the vote of Florida should not be counted for Hayes. First, it has long been judicially settled, and the peace and security of society repose upon the doctrine, that all acts of officers *de facto* are valid and binding until they are ousted and dispossessed by the judgment of a competent court. Hence, if a person exercising the duties of judge should, pending proceedings to oust him, make and enter decrees by which men should be hanged or imprisoned or their property be taken away, all such decrees made before judgment of ouster would stand as firmly as though his judicial title were unquestioned. In this case it should be remembered that the first and only official act of the Hayes electors was performed on the very day proceedings against them were instituted.

And second, if the rule were not as stated, the title of a President of the United States could at all times be made to depend upon the judgment of a State court, for it would be easy in many States, after the result of an election should be known, to take proceedings

against electors before a judge not likely to sympathize with the successful political party; and if these could be ousted the defeated Presidential candidate could succeed, not by "votes of electors, appointed by each State in such manner as the Legislature thereof may direct," but by some convenient judge, elected, perhaps, for one, two, or four years, and ready to do a political service upon the promise of a future nomination.

And, finally, we suggest that it would be extremely dangerous to permit any interference whatever by Federal or State courts with the office or functions of Presidential electors upon the pretext that they were not duly appointed, — a pretext easily manufactured, and one which in the hands of a partisan judge might result in great and permanent mischief. We commend these views to Judge Black in the hope that in his calmer moments a little reflection may lead him to a change of mind concerning the effect of *quo warranto* proceedings, and to a milder mode of expression towards those who differ with him on that subject.

It seems unnecessary to expose more fully than has been done his grave offence in charging wilful and palpable violations of law upon the majority of the Commission. Their course is vindicated throughout by great principles of constitutional law, administered by them with distinguished ability and entire impartiality from the moment they became members of the Electoral Tribunal. He has done them great injustice; he has denounced them falsely; he has uttered false and malicious clamors against his political opponents, and in so doing is condemned out of his own mouth, when he declares: —

> "If the organs and representatives of the Democracy have merely raised a false and malicious clamor against their opponents, they deserve the severest reprehension that the censure of the world can visit upon them; they should be deprived of all political influence, and no share in public business, local or national, should ever again be trusted to their control."

Is this the deliberate opinion of Judge Black, or has he mistaken his symptoms, and is this noble utterance but a mere form of words? Consider what he has said: that if the Republicans have been by their political adversaries falsely and maliciously accused of having, by means of the Electoral Commission or otherwise, been guilty of fraud in electing a President, a deprivation of all political in-

fluence, and of all share in public business, should forever follow as its punishment. From this it appears that in his esteem the crime of treason, as compared with a false political clamor, is but a venial offence; for Mr. Tilden was but the nominee and instrument of the men who organized and fought the Great Rebellion against their country, and whilst Judge Black was zealously employed as counsel before the Commission, the dominant leaders of his party in the House of Representatives, numbering some fifty or sixty, had but lately been engaged in leading rebel armies in the field. For this, the highest of crimes, should they not be forever deprived of all political influence and of all share in public business, local or national? Or is his moral sense so nice, and his political sense so diseased, that in his opinion falsehoods uttered in the heat of a political canvass or at its close should be thus punished, whilst the reward of traitors should be a speedy resumption of political influence and an early control of the public business?

In view of the unfounded statements and false clamor with which Judge Black has stuffed his article, has he not denounced his own offence, and prescribed his own punishment? The pride of the stern Roman was that he could judge his son as if he were a stranger. For a still nobler virtue may not the future historian point to a son of Pennsylvania?

Men familiar with the career of Judge Black, whilst doubting his sincerity in prescribing the punishment due to false and malicious clamor, can nevertheless believe him capable of regarding with favor the treason of his political allies. And, indeed, it is possible for him to sincerely denounce the one and approve the other. Man is a marvellously compounded animal, and in this respect Judge Black is not an exception. Whole tribes and peoples could be mentioned where treachery and murder are tolerated, and even encouraged, whilst a non-observance of the least of their religious forms and ceremonies would be regarded as highly criminal. Early training and associations inspire men with strange, grotesque, and inconsistent views; and sometimes even in middle life impressible and inflammable natures adopt opinions painful to their friends and shocking to all good citizens. This it was which befell Judge Black in the latter days of President Buchanan's accursed administration; for he then first made public profession of devotion to treason against his government. In proof of this his own

official opinion when Attorney-General of the United States will be invoked, and that of his political chief Buchanan, by whom the opinion was adopted and followed.

The end of his Presidential term was near. That portion of his Cabinet by whom he was most influenced were Southern men, who for years had been plotting treason and preparing for rebellion against their government, that a great and independent slave confederacy might cover the South.

Mr. Black, though not an original conspirator with these men, was proud to share their confidence, and not slow to adopt their views. Their plan being to secure, at an early day, recognition of the Confederacy by foreign nations, it was thought this could be readily accomplished if the highest law officer of the government, to be followed by its executive head, could be induced officially to declare that the United States was not a consolidated nation, but a union of independent States, bound together by compact merely, each having the right to separate from the Union at pleasure. There was in this a devilish cunning, and a vital question to these arch plotters was, Could the executive head of the government of the United States be induced officially to utter this doctrine, coupled with the declaration that it had no constitutional or rightful power to crush rebellion by force of arms? If it could, opportunity would be given to organize rebellion; and should foreign governments recognize the new confederacy, no just cause of complaint could be made against them for so doing.

It would indeed be as justifiable as if our government should recognize as independent one established in Canada, after the Queen by her proclamation, sustained by the opinion of her attorney-general, had declared that she had no power to compel obedience there by force. We perceive, therefore, that the treason organized under Buchanan, and to which Mr. Black became a party, was double-headed and revolting. It organized rebellion in force throughout the South; it paralyzed the arm of the government to suppress it whilst forming; and it invited and justified recognition of the new confederacy by foreign nations, as soon as it could raise its head and assume a name. In the history of man treason so revolting had never been planned, and when its purpose to perpetuate slavery is considered, its entire hideousness stands revealed. We suppose the man to whom a false political

clamor appears so criminal could not have entertained this view of the work his masters had set him to do. The Rebellion was organized, and then was heard the rumbling of its artillery, the roar of its music, the shouts of its adherents. By concert of action, State after State, trampling upon the old flag, raised the new, and marched out of the Union, carrying ordinances of secession as their excuse for establishing a new confederacy, to be founded, as the conspirators openly declared, upon African slavery as its corner-stone. South Carolina seceded on the 6th of November, 1860, and Georgia on the 8th. The whole North stood aghast with horror as they saw the nation crumbling to pieces, with no hand raised in Washington to save it. The conspirators there were not idle. The crowning infamy of their work was in progress, — the work of many minds though of a single pen. The Congress was to meet on the first Monday of December, when the President must explain and if possible justify his complicity with treason. The armies and the navies of the Union were scattered far and wide, commanded in part by those ready at the nod of traitors to join the rebellion. Then on the 20th of November came the opinion of the Attorney-General of the United States, preparing the ground for the message of his chief, telling the nation that armies and navies were needless, for that it had been, by its Constitution, denied the power of self-preservation, although its personal and real property scattered throughout the rebellious States, and useful only for the maintenance there of its national power, might be preserved by force, if force should for that purpose become necessary; in other words, that its arsenals, its dockyards, its post-offices, and court-houses it might retain, but that it had no power to enforce obedience to national laws, unless, indeed, those who held the States in rebellion should ask it, which was not probable. After stating that the troops of the United States can only be employed in a State to assist the courts in enforcing their process, and that "on such occasions the military power must be kept in strict subordination to the civil authority," he adds: —

"But what if the feeling in any State against the United States should become so universal that the Federal officers themselves, including judges, district attorneys, and marshals, should be reached by the same influences, and resign their places? We are therefore obliged to

consider what can be done in case we have no courts to issue judicial process, and no ministerial officers to execute it. In that event troops would certainly be out of place and their use wholly illegal. Under such circumstances, to send a military force into any State with orders to act against the people would be simply making war upon them."

Much more, similar in kind and justifying the treason then prevailing, is contained in this opinion, from which we pass to the message of the President founded upon it. In that it is declared

"That the power to make war against a State is at variance with the whole spirit and intent of the Constitution. Suppose such a war should result in the conquest of a State, how are we to govern it afterwards? Shall we hold it as a province, and govern it by despotic power? But if we possessed this power, would it be wise to exercise it under existing circumstances? The object would doubtless be to preserve the Union. War would not only present the most effectual means of destroying it, but would banish all hope of its peaceable reconstruction. The fact is, that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. Congress possesses many means of preserving it by conciliation, but the sword was not placed in their hand to preserve it by force."

These were the sentiments which Mr. Black and his chief had been inspired by their treasonable allies to utter in aid of that great Rebellion which finally filled the soil of the nation with the blood and graves of her sons. How far it would have advanced if, at the outset, it had encountered the resistance of brave and patriotic men, cannot with certainty be told; but we may confidently assert that, if such had filled the great places occupied by Buchanan and his Attorney-General, tens of thousands of lives and hundreds of millions of treasure would have been saved to our country. And yet to-day, after years of opportunity for reflection and repentance, Mr. Black doubtless says, in his heart, that he believes the Rebellion was a righteous uprising against the Abolitionists of the North, and was put down by the wicked exercise of an overwhelming force, not to assist in the service of judicial process, nor for the protection of government property, but for the unconstitutional purpose of preserving the Union by the sword. How can such a man judge fairly or speak moderately of a political party to which he attributes such past wickedness? By what warrant does he stand up before the American

people to denounce and condemn those to whom they owe all of country, of institutions, of nationality, dear to men? Clad in sackcloth and ashes, he and the traitors he abetted should await in penitential silence forgiveness of their great wrong, and then, with a modest but just estimate of themselves, refrain from provoking censure of their past conduct, by such decent utterances only as become offenders who, by the mercy of society, are again permitted to enjoy its blessings.

These observations have seemed appropriate in view of the statement of Judge Black that, to make his "simple narration," as he calls it, "more intelligible, it is necessary to remind the reader of certain points in our political history which have, within the last twenty years, divided the two parties and defined their antagonism," and especially in view of his perversions of that history. After stating that the Democracy, during the Civil War, were placed in the most difficult attitude that can be conceived, and that, "at the same time, the best convictions of their hearts impelled them to defend their individual rights of life, liberty, and property, which were most wantonly and unjustly assailed by the Abolitionists," he adds that, although President Lincoln and Congress solemnly declared that the war was purely in defence of the United States, and had no revolutionary purpose whatever, but should be conducted solely to enforce the laws and maintain the supremacy of the Federal Constitution, with all the rights of the States unimpaired, — nevertheless, all these pledges were perfidiously broken, and the Constitution, instead of being defended, was regarded as shot to death on the battle-field. He denounces the Reconstruction Acts of 1867, declares that the Republican party asserted the divine right of the negro to govern the white man, and secured his ascendency by the Fifteenth Amendment, in the confident hope that his ballot would be a more effectual instrument of tyranny than the soldier's bullet. He descends fiercely upon the carpet-baggers, as he calls them, who went South after the war, and asserts that "the best of them were those who went down after the peace, ready for any deed of shame that was safe and profitable"; and after stating, in his usual vivid style of misrepresentation, the methods they adopted, especially in Louisiana, to acquire political supremacy, and mortgage the future of her people by the issue of bonds, sneers at the thousands of

murders perpetrated by the white Democrats upon the negroes of that State, and after referring to the invention, as he calls it, of the Returning Board, denounces the action of its members with a violence and force limited only by his capacity to use the English language.

Those most charitably inclined towards Judge Black must have observed with some pain, that, whilst he is ever ready to condemn and denounce those who preserved the nation from destruction, and to charge them with having, by means of the Reconstruction Acts and the Fifteenth Amendment, violated the constitutional rights of the South, he utters no censure against those who, by organizing rebellion to destroy the Constitution, made these Acts and this Amendment necessary. It was natural that he should feel deeply the defeat of his treasonable allies by the abolitionists, as he calls them, of the North. A long and desperate war followed the careful preparation for which, with his assistance, time and opportunity had been given to the South. Four years of struggle — four long and weary and bloody years — were the fruit of that treason which had been ripening at the South for more than a quarter of a century. When the contest closed their slaves were free, and whatever of privilege traitors could claim was not of right, but of the mercy of their conquerors. Every man engaged in the Rebellion had forfeited his life to his offended country, and many of its leaders had magnified their crime by plotting and organizing it, whilst in the service and pay of the government they betrayed. Does Judge Black venture to suggest that such men were, on the suppression of the Rebellion, entitled to seats in the national councils, or that the people who had engaged in it were then entitled to representation of their States in Congress? The Reconstruction Acts were a temporary necessity, and to the South a most merciful and humane one. They organized State governments and prepared the way for the establishment of republican institutions. But the old spirit of hatred towards the North and a determination to hold the black race in subjection still prevailed, and it was evident that its substantial enslavement in some form was sure to occur, unless the rights of citizenship were conferred upon its members, and this was done by the Fifteenth Amendment, so violently denounced by Judge Black. That, however, has not protected them. They are but numbered among the citizens of the South, and

used as a basis of representation, by means of which the ruling whites there have secured an increase in numbers and influence in Congress largely exceeding what was enjoyed before the war.

Having made these general observations, it seems appropriate to correct some of Judge Black's statements concerning the carpet-baggers who emigrated to the South soon after the war, who, as described by him, "were the meanest of camp-followers, fugitives from Northern justice, the best of whom were ready for any deed of shame that was safe and profitable." And then a picture is drawn of their doings with a vividness and malignity only surpassed by its untruth.

It is well known that when the war ended the South was greatly impoverished, — destitute of capital, unable for want of that and labor to cultivate the lands, which had become wasted and almost worthless. Northern capital was needed and earnestly asked for, and much was taken South and employed there, — some by its owners and some as loans. Those who went there were in the main imbued with Northern principles, and with Northern habits of thrift, industry, and economy, and these were in striking contrast with the customary idleness and contempt for labor which distinguished the whites of Southern birth. Nevertheless, great numbers of worthy, industrious men — many of moderate means and some of considerable wealth — went from the North to the Southern States, with their wives and children, intending permanently to remain. The vast majority went to settle, to work, and to live honestly. They purchased and leased plantations, they opened stores, they built mills, they bought and worked mines, they engaged in teaching and entered upon all branches of protective industry. Statistics carefully gathered show that in South Carolina alone, between January, 1866, and January, 1869, not less than two thousand able-bodied men from the Northern States, with their families, settled, carrying with them and actually investing in active business pursuits over thirteen millions of dollars; and in addition to this, not less than one thousand more settled there from the North, and were engaged in teaching, or in the practice of professions not requiring capital. And it is a fair and probable estimate, that from 1866 to 1868 there settled from the North, in the States of Virginia, North and South Carolina, Georgia, Florida, Alabama, Mississippi,

Louisiana, Texas, Tennessee, and Arkansas not less than sixty thousand men, mostly with families, carrying and investing in active industries there not less than the enormous sum of one hundred and eighty millions of dollars.

This great body of settlers were free men, accustomed to the ways of free society. They went South, not as politicians, but as citizens. Civil government was, however, a necessity to them, and when the era of reconstruction came, and the native whites withheld their aid from the mass of colored voters, as they sullenly and for a long time did in every State, the Northern settlers had no alternative but to take an active part in political affairs. Upon them, then, fell the hate and vengeance of the white Democrats, and the name of carpet-baggers was applied to them. All the milder forms of coercion were exhausted upon them,—social ostracism in all its forms. Then came active persecution,—warnings to leave the State, accompanied with demonstrations calculated to destroy the peace and sense of security of the families of Republican settlers; shooting at night around and into their houses; and, these failing, assassination and murder,—and when at length Northern men, by means like these, were driven from the South, they were able to carry but little property away with them.

Many Northern men could be named who, since the war, have settled in Louisiana, where they have invested large means in many of the finest, most productive, and best-worked sugar and cotton plantations of that State. Enough, however, has been said in reply to the vague and violent statements of Mr. Black on this subject, unsupported as they are by a single authority. It is now time briefly to notice his assertions concerning the taxation and debt of that State, and of the city of New Orleans, which he charges to have been created by carpet-baggers. Unfortunately for him, such statements are capable of verification and of contradiction, and as he has seen fit not to attempt the former, he must not complain if the latter shall be clearly supported by recorded facts.

The debt of the State of Louisiana before the war was between seven and eight millions of dollars. It increased under Democratic native white rule until 1867,—at the time Warmouth became governor,—when it amounted to about fourteen millions of bonded, and about two millions of floating debt, with a large contingent debt of many millions, authorized by Democratic Legisla-

tures to aid in building railroads and for other purposes of internal improvement. Governor Kellogg was inaugurated in January, 1873, for the term of four years. He found a bonded debt, increased during Governor Warmouth's administration from fourteen to about twenty-two millions of dollars. This, during that of Governor Kellogg, has been reduced, by compromise and otherwise, to a bonded debt of but $11,855,922, subject to be increased to between thirteen and fourteen millions at the utmost, should certain doubtful claims subject to adjudication be allowed; so that in January last the entire debt of the State, bonded and floating, was less than at the close of Democratic rule in 1867. Under his administration laws long before passed, authorizing the issue of State bonds or obligations for contingent liabilities to the amount of some twenty-one million dollars have, on Governor Kellogg's recommendation, been wholly repealed. Constitutional amendments by him urged have been adopted, prohibiting the Legislature from hereafter increasing the State debt, or the rate of taxation, beyond a very moderate sum particularly specified, and expressly declaring that no expenditure beyond revenue shall ever be authorized.

In answer to the reckless and wholly unfounded statement of Judge Black, that the carpet-bag government "put their fraudulent bonds on the market, and sold them for what they would fetch," it may be said, that during the entire administration of Governor Kellogg but $576,000 of bonds were sold, and these were issued before he took office, under an act passed in aid of the North Louisiana Railroad Company.

But it is said the city of New Orleans has been plundered by the carpet-baggers, and its property so taxed as to be worthless. A few facts will dispose of this misstatement. With the exception of a part of the year 1870, and from the time of the election in that year until November, 1872, that city has been for a generation or more, and still is, under native white Democratic rule of mayor and aldermen and council. In 1870 Governor Flanders — an estimable man, as we are assured, and a Republican — was appointed mayor by Governor Warmouth, to hold office as such in conjunction with a council — part white and part colored — until the election in November of that year, when they were by election continued in office until November, 1872, and then were super-

seded by a Democratic mayor and council, which have ever since been continued. No Republican Legislature of Louisiana ever imposed a debt or charge upon the city except for its due proportion of State taxation, nor did such Legislature ever authorize the city to increase its debt for any purpose. It now owes about twenty-three million dollars, all of which accrued under Democratic rule, except an apparent increase of less than four million dollars due to the funding, under the administration of Mayor Flanders, of a floating debt incurred by his Democratic predecessors. These facts, being matters of record, Judge Black could easily have ascertained, had his purpose been to write what history could adopt without shame. It was not, however, and hence he states that the burdens imposed by the carpet-baggers upon this devoted city within the last ten years had been such that its debt was more than the estimated value of all the property within its limits. Its total bonded and floating debt at the close of the Republican administration in January last was less than twenty-four millions of dollars, and the estimated taxable value of its property upwards of one hundred and twenty-four millions,— a discrepancy between truth and falsehood of more than one hundred millions of dollars. To restrain the wasteful expenditure which had so disgraced the administration of affairs in that city by the white Democracy, an amendment of the Constitution was strongly urged by Governor Kellogg, prohibiting any subsequent increase of the city debt; and it is worthy of remark that this, and also those by him recommended limiting the power of the Legislature to increase the State debt, or its rate of taxation beyond the sum specified, or the appropriation of moneys in excess of the actual revenue, were persistently opposed by the Democratic press and party throughout the State, and were only adopted by a strict Republican party vote. We leave Judge Black to ponder over these statements, and possibly to regret that he should have permitted his inventive faculties to become his master.

We now approach that portion of his article devoted to a justification of the murders, assassinations, outrages, and nameless horrors perpetrated in Louisiana by the white Democrats upon colored and white Republicans. By a strange and horrid perversion, these crimes are charged upon what Judge Black calls the carpet-bag government. To make this seem plausible, he says:

"If an officer whose duty it is to bring a felon to justice connives at his escape, he becomes an accessory after the fact, and his offence is as great as that of the principal. The carpet-baggers professed to be the special friends and protectors of the African race; yet they permitted them to be slaughtered by thousands with quiet unconcern, not lifting a finger to stay the wholesale destruction of their lives. Some of their advocates say they were too weak to maintain public order. This will not do. A magistrate who says he cannot punish or prevent continued murder is himself a murderer, unless he gives place to somebody who can."

In other words, if armed ruffians and organized murderers and assassins are too strong to be resisted, suppressed, and punished by the regular government and the officers of justice, the latter should retire, and the ruffians, murderers, and assassins take their places. The late strikes and riots in Judge Black's native State of Pennsylvania furnish an illustration in point. There its officials were for a time powerless to prevent robbery, murder, and destruction of property, and were compelled to call for external military aid. Were they accessories after the fact, and therefore guilty of these grave offences? And yet the capacity for mischief and crime of the wretches who committed these outrages was trifling when compared with that of the Regulators, who, as Judge Black says, traversed the State of Louisiana. These were permanent armed organizations; not like the rioters of Pennsylvania, denounced and hunted down by respectable citizens, but protected and encouraged by every white Democrat within the State. They lived in open hostility to a government which, although lawfully established, was nevertheless the offspring of negro suffrage, to which they had sworn never to submit. The feeble and timid race upon whom perhaps unwisely had been conferred the rights of citizenship were equal to the whites before the law, but they and their officers of justice feared the terrible strength of their former masters, and therefore failed to execute justice upon them, even for murder. And so says Mr. Black, these magistrates became, because of their weakness, guilty accomplices.

Whilst admitting that thousands of murders were thus perpetrated, he does not attempt to justify them except by the suggestion that the government was not strong enough to prevent them, and hence should have been replaced by one administered by the Regulators themselves. Literally, therefore, his argument is, that when

an armed mob, insurrection, or banditti becomes so strong that it cannot be subdued by the government of a State, its leaders should be allowed to assume control of the State, and under the forms of law exercise absolute sway over its citizens and resources. Our Constitution has carefully guarded against such a result, and the events of the last few weeks have illustrated with what facility and effectiveness its provisions for suppressing insurrection and domestic violence can be put in operation by an able and earnest national executive, even with a feeble and utterly inadequate military force. This mode of enforcing submission to the laws will never, we trust, be abandoned, and with a few more lessons on the subject, our people will be led to the conclusion that the solid battalions of the Federal army, as they are called by Judge Black, are the best police possible for the attainment of that end. The extent of these late violent and destructive demonstrations, thus speedily quelled, should inspire our people and foreign nations with increased confidence in the stability and permanence of our Republican institutions; for besides the ready submission of the rioters to the power of the national government, the voluntary organizations of armed citizens which suddenly appeared in its aid well illustrated the respect and affection entertained for it by our people.

The wretched attempt by Judge Black to excuse the murders and outrages committed in Louisiana, and his assault on the Returning Board of that State, invite a simple narration of the causes which demanded and led to its creation.

The legal colored voters of Louisiana, from the time they were made citizens until now, have considerably outnumbered the whites, and with few exceptions the blacks have uniformly voted the Republican ticket. Thus, in November, 1876, on the day of election, there were in that State, as the official returns show, 92,996 white registered voters and 115,310 colored, — a majority of the latter of 22,314, — and such has been substantially the relative majority from the adoption of the Fifteenth Amendment. This gave the colored race numerically the political ascendency, the advantages of which the white Democrats soon resolved they should not be permitted to enjoy. As early as 1866 about two hundred colored men were murdered in New Orleans, and some one hundred and sixty wounded, for venturing to meet as members

of a convention to amend the Constitution of the State, and to this must be added the massacres of Grant Parish, Coushatta, St. Laudry, and Feliciana. These acts of blood struck the colored race with terror. Like atrocities were not, for political causes, repeated to any considerable extent until the summer and fall of 1868, just preceding and as a preparation for the Presidential election.

In the spring of that year the entire registered vote of the city of New Orleans was 29,910, of which 15,020 was colored Republican, and at the city election then held there were 13,973 Republican votes cast. All this was utterly changed prior to the Presidential election in November following.

Governor Seymour had been nominated for the Presidency by the Democratic party, and General Grant by the Republican. The former was known to have sympathized warmly with the South during the war, and to have been strongly opposed to it from the beginning; and it was believed that under his administration the South might still be able to regain a part at least of what had been lost by the Rebellion. The most active and unscrupulous efforts were therefore made by the Democratic party throughout the Union to attain success. In the State of New York its managers fairly distanced all competitors, especially in the open and shameless perpetration of fraud. Mr. Tilden was chairman of the Democratic State Committee. Tweed and Sweeny, his subordinates, held the fortress of the party in the city of New York, where, as is now known of all men, twenty-five thousand Democratic votes were manufactured to offset the fifteen thousand majority actually cast for General Grant, and to give, in addition, an apparent majority of ten thousand for Governor Seymour. It is a striking and singular coincidence, that, whilst the frauds thus committed in New York in 1868 led the Congress of the United States, for the purpose of preventing their recurrence at elections for members thereof, to pass laws which were violently denounced by the Democrats, the outrages and murders committed during that year in Louisiana made the Returning Board a necessity, as will hereafter be demonstrated.

The Democratic party in New York could boast of managers more adroit than any who controlled it in Louisiana; but those in the latter State would have scorned the vulgar and cowardly method of carrying an election by the manufacture of votes. Their

plan, though not less effective, demanded a certain amount of courage for its execution. They organized, as political allies, violence, intimidation, outrage, and murder, and, advancing these to the front, felt assured of victory. Secret armed political clubs were formed in almost every parish of the State, and these soon spread wide and almost universal terror among the colored people. A more gentle, but very efficient influence was exerted upon them and their white leaders by planters and merchants who bound themselves, by resolutions and in clubs, to proscribe in business and in employment persons who opposed, by vote or otherwise, the purposes of the Democratic party. Extracts from its press show that portions of it advocated bloodshed and violence for political ends; others secretly encouraged this, and by none was it openly condemned. A reference to the files of the newspapers of Louisiana for 1868 will give abundant and astonishing proof of the extent to which they went in that direction. These preparations bore terrible fruit, and from September until November at least five horrible massacres of colored people were perpetrated. On the 28th of September one was commenced in the parish of St. Laudry, which lasted several days, during which two or three hundred were killed. For several days between the 20th and 30th of that month a similar massacre occurred in the parish of Bossier, in which more than two hundred colored people were destroyed; and others, perpetrated in October for like causes, occurred in the parishes of Caddo, Jefferson, and St. Bernard; and in that of St. Mary its sheriff and parish judge, both Republicans, were publicly assassinated in their own houses by armed men. In New Orleans riots prevailed for weeks, filling the city with scenes of blood, and Ku-Klux notices were posted throughout it, warning the colored men not to vote. The effect of these outrages, only a few of which have been mentioned, did not disappoint the expectations of their perpetrators. The parish of Orleans, which in the spring had, as before stated, given a Republican vote of 13,973, in the autumn gave for General Grant but 1,178. In the parish of St. Laudry not a vote was cast for him, though the Republicans had a registered majority of 1,070 voters, and had in the spring carried the parish by a majority of 678. In the parish of Caddo, where the Republicans had 2,987 Republican votes, but one was cast for General Grant, and, to generalize, where by the official

registration of that year the Republicans had in twenty-four parishes 47,923 votes, he received but 5,360. The Fifteenth Amendment was thus in Louisiana extinguished in blood. The right of the colored man to vote was blotted out. Murder and outrage effaced in 1868 what the armies of the North had written in the Constitution of the nation. What was to be done to prevent by law these great wrongs? The essential element of an election is freedom of choice. One of Judge Black's favorite propositions is, that fraud vitiates all proceedings. It will annul an election. It would have annulled that held in New York in 1868. Does he regard the terrorism and murder which prevailed in Louisiana at that time as less reprehensible? Take, for instance, the parish of Orleans. There, by a preconcerted political plan, intimidation and violence reduced the Republican vote in 1860 from 13,973 in the spring, to 1,178 in the fall. This well illustrates the condition of the vote in other parishes. Does Judge Black think men elected by such means should take and hold office? He would, he says, punish the guilty, but would not disfranchize the voters. The law, however, favors and guarantees a fair and free election, where all who are entitled may vote; and it also provides that a majority of the voters may elect. Let us suppose that in Louisiana a parish has a majority of five thousand Republican voters, and that this is entirely suppressed by fraud or violence. If neither had been employed, that majority would have been added to the Republican vote of the State, and have turned the scale. It is, however, blotted out, and the State is lost. Strict justice would demand that the political party succeeding by such means should fail, and that the vote thus suppressed should be given to its opponent.

The Legislature of Louisiana was called upon, in view of the outrages of 1868, to devise some means of preventing their repetition. It dealt temperately with the subject, and with great fairness towards the Democrats. It provided, not for adding to the Republican votes cast those suppressed by violence and intimidation, but declared that where these causes prevented a fair and free election, a tribunal upon competent proof of the fact, both sides having an opportunity to be heard, might altogether reject the vote of the poll thus dominated. This was an inadequate remedy for the mischief; but it was to apply this remedy, and not for the

purposes mentioned by Judge Black, that the Returning Board of Louisiana was organized. Intimidation, fraud, violence, armed disturbance, preventing a fair and peaceful election at any poll, proved by sufficient testimony, both sides having opportunity to be heard, made it the sworn duty of the Board to reject that poll. If a Republican majority of thousands were suppressed by such means, not a vote could be added. The poll must be rejected. This led, as will be seen, to the cunning selection by Democratic managers, in 1876, of parishes for the practice of their outrages where Republican majorities were large, and ability to suppress them, without interruption, ample.

Are the causes which led to the creation of the Returning Board those stated by Judge Black; or are they to be found in the wicked attempts of the party to which he belongs to attain its ascendency by violence, intimidation, outrage, and murder, and the utter extinction of those privileges of citizenship intended to be secured by the Fifteenth Constitutional Amendment? Was that Amendment, as he states, an assertion of the divine right of the negro to govern the white man; or an effort to relieve the colored race from that subjection to the whites which the divine law condemns? Whatever may be the authority for the Amendment, every honest and law-abiding citizen is bound to aid in its enforcement. A nation which fails to put forth all its strength to protect its citizens, white or black, from foreign aggression and outrage, stands degraded before the world. When a thousand of them are shot down within its own borders for attempting to exercise the right to vote, what shall we say of the government which fails to vindicate its laws thus violated? The State of Louisiana attempted, by the legislation in question, to make it unprofitable for a political party to practise outrage or intimidation. It in part succeeded; and yet grave crimes were committed in that State, during the last Presidential election, that it might be carried for the Democratic candidates. That this was so is a conclusion forced upon us by a few general but very impressive facts, independent of the conclusive proofs taken by the Returning Board and by the Congressional Committees. The registered colored vote of Louisiana on the day of the election in November last was, as before stated, 115,310 to 92,996 white. In forty of the fifty-seven parishes of the State, where no serious

intimidation prevailed, including that of Orleans, which was largely Democratic, the majority of Republican votes actually cast was 6,097. The remaining seventeen parishes contained 20,323 registered colored voters and 16,253 white, — the former, like those in the forty parishes, being almost exclusively Republican. Judge Black says the majority of votes actually polled by the Democratic party within the State is admitted to have been 7,639. Assuming this to have been so, the Democrats must have succeeded, with 16,253 white voters, in getting a majority, over 20,323 colored, of 13,736. Does he believe this to have been possible, in face of the Republican majority of 6,097 in forty parishes? What, in his opinion, led to such a remarkable conversion to the Democratic faith of the negroes in seventeen parishes? Was it weariness and discontent of carpet-bag rule, or was the result secured by that violence and crime so successfully employed in 1868? But this is not all. Five of these seventeen parishes were especially selected for the employment of these modes of conversion, first, because of their favorable location on and near the borders of Mississippi and Arkansas, and, second, because of the large majority of colored Republicans which they contained. There were within them but 5,134 white registered voters to 13,244 colored, and yet so effective were the intimidation, violence, and murder there employed, that a Democratic majority was secured of 4,495, — equal within 639 of the entire registered Democratic vote. Does not this raise a suspicion, even in the mind of Judge Black, that other causes than disgust of carpet-bag rule produced this result? Does it not look like the fruit of a policy organized for violence, cropping out here and there in murder, until it had filled the land with terror?

If he shall resist presumptions like these, then would he refuse to believe though one should rise from the dead. He is, however, commended to the testimony taken in volumes before the Returning Board and the two Committees. He has said there was no proof of violence in the parish of East Feliciana, which contained a registered colored vote of 2,127, and a registered white vote of 1,737, and where not a Republican vote was cast. Let him, in refutation of this, look at the testimony of many witnesses who, before the Returning Board, swore to scenes of terrible violence, creating general intimidation at the polls throughout that parish on the day of election.

Judge Black has certainly omitted nothing of slander, nothing of reprobation, nothing of denunciation, of all those who in any manner aided in securing the elevation of Mr. Hayes to the Presidency, which the most violent and reckless of his party can desire. He has constructed with malicious ingenuity a well-compacted series of misstatements, each reposing upon assertions positively made, and all as a rule destitute of any solid foundation. In so doing truths have been so perverted as to become falsehoods, and falsehoods so interwoven with these as to appear like truths. He has even assailed those who at the request of the President went to New Orleans to witness the count of the electoral vote by the Returning Board, after it was known that, at the request of Mr. Tilden, several distinguished Democrats were to attend there for that purpose. Of the Republicans who went there Judge Black with unblushing effrontery declares: "They might have caused a true count of the vote if they had wished it; one word of reprobation from them would have paralyzed the rascality of the Returning Board." And he adds, they "encouraged, aided, and abetted by every means in their power the perpetration of the Great Fraud, and after it was done held it up as a righteous act."

Perhaps after the many exposures already made of the misrepresentations which jostle and crowd each other from the beginning to the end of Judge Black's article, a presumption arises against him such as the common law invokes against one who swears falsely with knowledge. If so, this unfounded charge deliberately made against men who undertook without compensation, at great personal sacrifice, to perform what they and others of both parties deemed a public service, is already answered. They met in presence of the Returning Board, and at its request, eminent Democrats who were present upon a like invitation, and attended daily before it, nothing whatever being done by its members except in presence of the representatives of both political parties, and of their stenographic reporters, from the time the Board organized until its labors closed and its members had retired to deliberate upon the testimony before them. To have interfered with their duties, to have proffered them advice for the purpose of influencing the result of their deliberations, and especially to have reprobated them, as suggested by Judge Black, would have been a gross outrage upon them personally, an insult to their office, and most disrespect-

ful to the State whose supreme organs they were. There is no reason to suppose they failed to exercise a wise and just discretion, and it is quite certain the conclusions they reached have not been in the least shaken or disturbed by the unsupported assertions of Judge Black. When he shall venture beyond the domain of denunciation, and, entering the fair field of inquiry and of argument, shall candidly explore the proofs on which the Board acted, and especially when he shall honestly endeavor to realize that the Electoral Commission was powerless under the Constitution and law to disregard the final will of the States of Louisiana, Florida, and Oregon, he will engage in a task which may open his mind to the truth, leading him to the conclusion that the nation has not been betrayed, and that the Great Fraud of 1876 was but the figment of a disordered imagination.

E. W. STOUGHTON.